

## Article 7.

### Construction of Improvement.

#### **§ 156-83. Superintendent of construction.**

The board of drainage commissioners shall appoint a competent drainage engineer of good repute as superintendent of construction. Such superintendent of construction shall furnish a copy of his monthly and final estimates to the Department of Environmental Quality, in addition to other copies herein provided which shall be filed and preserved. In the event of the death, resignation, or removal of the superintendent of construction, his successor shall be appointed in the same manner.

The board of drainage commissioners may, in its discretion, agree with the Soil Conservation Service of the Department of Agriculture or any agency of the government of the United States or of North Carolina whereby such agency may furnish the service required of the superintendent of construction. If this is done by the board, any reference in this Chapter to the superintendent of construction and/or his duties shall include or be exercised by the said agency subject to the approval of the board of commissioners. (1909, c. 442, s. 20; C.S., s. 5340; 1923, c. 217, s. 3; 1925, c. 122, s. 5; 1959, c. 597, s. 3; 1961, c. 1198; 1963, c. 767, s. 5; 1973, c. 1262, s. 23; 1977, c. 771, s. 4; 1989, c. 727, s. 218(160); 1997-443, s. 11A.123; 2015-241, s. 14.30(u).)

#### **§ 156-84. Letting contracts.**

The board of drainage commissioners shall cause notice to be given of the letting of the contract. The notice shall be posted at the courthouse door in the county wherein the district was organized. Notice shall be posted no less than 15 days prior to the opening of the bids and shall be published at least once a week for two consecutive weeks immediately prior to the opening of the bids, in some newspaper published in the county wherein such improvement is located, if such there be, and such additional publication elsewhere as they may deem expedient, of the time and place of letting the work of construction of such improvement, and in such notice they shall specify the approximate amount of work to be done and the time fixed for the completion thereof; and on the date appointed for the letting they, together with the superintendent of construction, shall convene and let to the lowest responsible bidder, either as a whole or in sections, as they may deem most advantageous for the district, the proposed work. No bid shall be entertained that exceeds the estimated cost, except for good and satisfactory reasons it shall be shown that the original estimate was erroneous. They shall have the right to reject all bids and advertise again the work, if in their judgment the interest of the district will be subserved by doing so. The successful bidder shall be required to enter into a contract with the board of drainage commissioners and to execute a bond for the faithful performance of such contract, with sufficient sureties, in favor of the board of drainage commissioners for the use and benefit of the levee or drainage district, in an amount equal to no less than 25 nor more than one hundred per centum (100%) of the estimated cost of the work awarded to him. In canvassing bids and letting the contract, the superintendent of construction shall act only in an advisory capacity to the board of drainage commissioners. The contract shall be based on the plans and specifications submitted by the viewers in their final report as confirmed by the court, the original of which shall remain on file in the office of the clerk of the superior court and shall be open to the inspection of all prospective bidders. All bids shall be sealed and shall not be opened except under the authority of the board of drainage commissioners and on the day theretofore appointed for opening the bids. The drainage commissioners shall have power to correct errors and modify the details of the report of the engineer and viewers if, in their judgment,

they can increase the efficiency of the drainage plan and afford better drainage to the lands in the district without increasing the estimated cost submitted by the engineer and viewers and confirmed by the court. (1909, c. 442, s. 21; 1911, c. 67, s. 4; C.S., s. 5341; 1959, c. 806; 1963, c. 767, s. 6.)

**§ 156-85. Monthly estimates for work and payments thereon; final payment.**

The superintendent in charge of construction shall make monthly estimates of the amount of work done, and furnish one copy to the contractor and file the other with the secretary of the board of drainage commissioners; and the commissioners shall, within five days after the filing of such estimate, meet and direct the secretary to draw a warrant in favor of such contractor for ninety per centum (90%) of the work done, according to the specifications and contracts; and upon the presentation of such warrant, properly signed by the chairman and secretary, to the treasurer of the drainage fund, he shall pay the amount due thereon. When the work is fully completed and accepted by the superintendent he shall make an estimate for the whole amount due, including the amounts withheld on the previous monthly estimates, which shall be paid from the drainage fund as before provided. (1909, c. 442, s. 22; C.S., s. 5342.)

**§ 156-86. Failure of contractors; reletting.**

If any contractor to whom such work has been let shall fail to perform the same according to the terms specified in his contract, action may be had in behalf of the board of drainage commissioners against such contractor and his bond in the superior court for damages sustained by the levee or drainage district, and recovery made against such contractor and his sureties. In such an event the work shall be advertised and relet in the same manner as the original letting. (1909, c. 442, s. 23; 1911, c. 67, s. 5; C.S., s. 5343.)

**§ 156-87. Right to enter upon lands; removal of timber.**

In the construction of the work the contractor shall have the right to enter upon the lands necessary for this purpose and the right to remove private or public bridges or fences and to cross private lands in going to or from the work. In case the right-of-way of the improvement is through timber the owner thereof shall have the right to remove it, if he so desires, before the work of construction begins, and in case it is not removed by the landowner it shall become the property of the contractor and may be removed by him. (1909, c. 442, s. 24; C.S., s. 5344.)

**§ 156-88. Drainage across public or private ways.**

Where any public ditch, drain or watercourse established under the provisions of this Subchapter crosses or, in the opinion of the board of viewers, should cross a public highway under the supervision of the Department of Transportation the actual cost of constructing the same across the highway shall be paid for from the funds of the drainage district, and it shall be the duty of the Department of Transportation, upon notice from the court, to show cause why it should not be required to repair or remove any old bridge and/or build any new bridge to provide the minimum drainage space determined by the court; whereupon the court shall hear all evidence pertaining thereto and shall determine whether the Department of Transportation shall be required to do such work, and whether at its own expense or whether the cost thereof should be prorated between the Department of Transportation and the drainage district. Either party shall have the right of appeal from the clerk to the superior court and thence to the appellate division, and should the court be of

the opinion that the cost should be prorated then the percentage apportioned to each shall be determined by a jury.

Whenever the Department of Transportation is required to repair or remove any old bridge and/or build any new bridge as hereinbefore provided, the same may be done in such manner and according to such specifications as it deems best, and no assessment shall be charged the Department of Transportation for any benefits to the highway affected by the drain under the same, and such bridge shall thereafter be maintained by and at the expense of the Department of Transportation.

Where any public ditch, drain, or watercourse established under the provisions of this Subchapter crosses a public highway or road, not under the supervision of the Department of Transportation, the actual cost of constructing the same across the highway or removing old bridges or building new ones shall be paid for from the funds of the drainage district. Whenever any highway within the levee or drainage district shall be beneficially affected by the construction of any improvement or improvements in such district it shall be the duty of the viewers appointed to classify the land, to give in their report the amount of benefit to such highway, and notice shall be given by the clerk of the superior court to the commissioners of the county where the road is located, of the amount of such assessment, and the county commissioners shall have the right to appear before the court and file objections, the same as any landowner. When it shall become necessary for the drainage commissioners to repair any bridge or construct a new bridge across a public highway or road not under the supervision of the Department of Transportation, by reason of enlarging any watercourse, or of excavating any canal intersecting such highway, such bridge shall thereafter be maintained by and at the expense of the official board or authority which by law is required to maintain such highway so intersected.

Where any public canal established under the provisions of the general drainage law shall intersect any private road or cartway the actual cost of constructing a bridge across such canal at such intersection shall be paid for from the funds of the drainage district and constructed under the supervision of the board of drainage commissioners, but the bridge shall thereafter be maintained by and at the expense of the owners of the land exercising the use and control of the private roads; provided, if the private road shall be converted into a public highway the maintenance of the bridge shall devolve upon the Department of Transportation or such other authority as by law shall be required to maintain public highways and bridges. (1909, c. 442, s. 25; 1911, c. 67, s. 6; 1917, c. 152, s. 6; C.S., s. 5345; 1947, c. 1022; 1953, c. 675, s. 26; 1957, c. 65, s. 11; 1969, c. 44, s. 78; 1973, c. 507, s. 5; 1977, c. 464, s. 34.)

#### **§ 156-89. Drainage across railroads; procedure.**

Whenever the engineer and the viewers in charge shall make a survey for the purpose of locating a public levee or drainage district or changing a natural watercourse, and the same would cross the right-of-way of any railroad company, it shall be the duty of the owner in charge of the work to notify the railroad company, by serving written notice upon the agent of such company or its lessee or receiver, that they will meet the company at the place where the proposed ditch, drain, or watercourse crosses the right-of-way of such company, the notice fixing the time of such meeting, which shall not be less than 10 days after the service of the same, for the purpose of conferring with the railroad company with relation to the place where and the manner in which such improvement shall cross such right-of-way. When the time fixed for such conference shall arrive, unless for good cause more time is agreed upon, it shall be the duty of the viewers in charge and the railroad company to agree, if possible, upon the place where and the manner and method

in which such improvement shall cross such right-of-way. If the viewers in charge and the railroad company cannot agree, or if the railroad company shall fail, neglect, or refuse to confer with the viewers, they shall determine the place and manner of crossing the right-of-way of the railroad company, and shall specify the number and size of openings required, and the damages, if any, to the railroad company, and so specify in their report. The fact that the railroad company is required by the construction of the improvement to build a new bridge or culvert or to enlarge or strengthen an old one shall not be considered as damages to the railroad company. The engineer and viewers shall also assess the benefits that will accrue to the right-of-way, roadbed, and other property of the company by affording better drainage or a better outlet for drainage, but no benefits shall be assessed because of the increase in business that may come to the road because of the construction of the improvement. The benefits shall be assessed as a fixed sum, determined solely by the physical benefit that its property will receive by the construction of the improvement, and it shall be reported by the viewers as a special assessment, due personally from the railroad company as a special assessment; it may be collected in the manner of an ordinary debt in any court having jurisdiction. (1909, c. 442, s. 26; C.S., s. 5346.)

#### **§ 156-90. Notice to railroad.**

The clerk of the superior court shall have notice served upon the railroad company of the time and place of the meeting to hear and determine the final report of the engineer and viewers, and the railroad company shall have the right to file objections to the report and to appeal from the findings of the board of commissioners in the same manner as any landowner. But such an appeal shall not delay or defeat the construction of the improvement. (1909, c. 442, s. 27; C.S., s. 5347.)

#### **§ 156-91. Manner of construction across railroad.**

(a) **Duty of Railroad.** – After the contract is let and the actual construction is commenced, if the work is being done with a floating dredge, the superintendent in charge of construction shall notify the railroad company of the probable time at which the contractor will be ready to enter upon the right-of-way of such railroad and construct the work thereon. It shall be the duty of the railroad to send a representative to view the ground with the superintendent of construction and arrange the exact time at which such work can be most conveniently done. At the time agreed upon the railroad company shall remove its rails, ties, stringers, and such other obstructions as may be necessary to permit the dredge to excavate the channel across its right-of-way. The work shall be so planned and conducted as to interfere in the least possible manner with the business of the railroad.

(b) **Utilities Commission to Settle.** – If the superintendent of construction and the railroad company shall not be able to agree as to the exact time at which such work can be done, including the time of beginning and the time to be consumed in such work, either party may give written notice thereof to the chairman of the Utilities Commission of the State, and thereupon the Utilities Commission shall cause an investigation to be made, and, after hearing both parties, shall fix the time of beginning such work and the time to be consumed in the work of construction, and the final determination of the Utilities Commission thereon shall be binding upon the superintendent of construction representing the district and the railroad company, and the work shall be done in such time as may be fixed by the Utilities Commission.

(c) **Penalty for Delay.** – In case the railroad company refuses and fails to remove its track and allow the dredge to construct the work on its right-of-way, it shall be held as delaying the

construction of the improvement, and such company shall be liable to a penalty of twenty-five dollars (\$25.00) per day for each day of delay, to be collected by the board of drainage commissioners for the benefit of the drainage district as in the case of other penalties. Such a penalty may be collected in any court having jurisdiction, and shall inure to the benefit of the drainage district.

(d) Payment of Expense. – Within 30 days after the work is completed an itemized bill for actual expenses incurred by the railroad company for opening its tracks shall be made and presented to the superintendent of construction of the drainage improvement. Such bill, however, shall not include the cost of putting in a new bridge or strengthening or enlarging an old one. The superintendent of construction shall audit this bill and, if found correct, approve the same and file it with the secretary of the board of drainage commissioners. The commissioners shall deduct from this bill the cost of the excavation done by the dredge on the right-of-way of the railroad company at the contract price, and pay the difference, if any, to the railroad company. (1909, c. 442, s. 28; 1911, c. 67, s. 7; C.S., s. 5348; 1933, c. 134, s. 8; 1941, c. 97, s. 1.)

#### **§ 156-92. Control and repairs by drainage commissioners.**

Whenever any improvement constructed under this Subchapter is completed it shall be under the control and supervision of the board of drainage commissioners. It shall be the duty of the board to keep the levee, ditch, drain, or watercourse in good repair, and for this purpose they may levy an assessment on the lands benefited by the maintenance or repair of such improvement in the same manner and in the same proportion as the original assessments were made, and the fund that is collected shall be used for repairing and maintaining the ditch, drain, or watercourse in perfect order: Provided, however, that if any repairs are made necessary by the act or negligence of the owner of any land through which such improvement is constructed or by the act or negligence of his agent or employee, or if the same is caused by the cattle, hogs, or other stock of such owner, employee, or agent, then the cost thereof shall be assessed and levied against the lands of the owner alone, to be collected by proper suit instituted by the drainage commissioners. It shall be unlawful for any person to injure or damage or obstruct or build any bridge, fence, or floodgate in such a way as to injure or damage any levee, ditch, drain, or watercourse constructed or improved under the provisions of this Subchapter, and any person causing such injury shall be guilty of a Class 3 misdemeanor, and upon conviction thereof may only be fined in any sum not exceeding twice the damage or injury done or caused. (1909, c. 442, s. 29; C.S., s. 5349; 1947, c. 982, s. 1; 1993, c. 539, s. 1075; 1994, Ex. Sess., c. 24, s. 14(c).)

#### **§ 156-93. Construction of lateral drains.**

The owner of any land that has been assessed for the cost of the construction of any ditch, drain, or watercourse, as herein provided, shall have the right to use the ditch, drain, or watercourse as an outlet for lateral drains from such land; and if the land be of such elevation that the owner cannot secure proper drainage through and over his own land, or if the land is separated from the ditch, drain, or watercourse by the land of another or others, and the owner thereof shall be unable to agree with such others as to the terms and conditions on which he may enter their lands and construct the drain or ditch, he may file his ancillary petition in such pending proceeding to the court, and the procedure shall be as now provided by law. (1909, c. 442, s. 30; 1915, c. 43, s. 1; 1917, c. 152, s. 3; C.S., s. 5350.)